

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

THE STATE OF OHIO, *ex rel*,

JEFFREY L. BUTLER, JR.
7046 Ruwes Oak Drive
Cincinnati, OH 45248

Relator,

-vs-

THE CITY OF CINCINNATI
801 Plum Street
Cincinnati, OH 45202

-and-

ELIOT ISAAC, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY
AS CHIEF OF POLICE OF THE CITY
OF CINCINNATI
City Hall
801 Plum Street
Cincinnati, OH 45202

Respondents.

Case No.: _____

Judge Robert P. Ruehlman

**VERIFIED PETITION AND
COMPLAINT FOR A
WRIT OF MANDAMUS AND
INJUNCTIVE RELIEF**

Comes now Relator, Capt. Jeffrey L. Butler, Jr. (“Capt. Butler” or “Relator”), by and through his undersigned counsel, and for his Complaint against Respondents The City of Cincinnati and Chief Eliot Isaac (“Respondents”), hereby states as follows:

1. This is a *mandamus* action brought pursuant to R.C. § 2731, for a *writ* compelling the Respondents to remove from Relator’s personnel files and ETS records the investigative

report underlying a reprimand which was issued to Capt. Butler on July 3, 2019 and unanimously reversed by a Peer Review Panel on July 25, 2019.

2. As a result of the Peer Review Panel's decision, Respondents removed the reprimand from Capt. Butler's personnel file and ETS records. However, the underlying investigation and report itself has not been removed, nor have Respondents confirmed to Capt. Butler that he has not been, and will not be, placed on a Brady List as a result of the investigation which led to the reprimand that was reversed by the Peer Review Panel.

3. Relator therefore brings this action to compel Respondents to remove the underlying investigation and resulting report itself from Capt. Butler's personnel files and ETS records, along with the vacating of all sustained findings, and confirmation that Capt. Butler has not been and will not be placed on a Brady List as a result of the investigation which led to the reprimand which was reversed by the Peer Review Panel.

4. This Court has jurisdiction over this original action pursuant to R.C. § 2731.02.

I. FACTUAL ALLEGATIONS

5. In his position as the highest ranking officer in the City of Cincinnati Police Department's Inspection Section, Capt. Butler was tasked with supervising the semi-annual Police Department audit of overtime usage.

6. This audit was conducted by personnel of the Police Department's Inspection Section under the command of Capt. Butler and under the oversight of then-Executive Assistant Chief David Bailey, the Administration Bureau Commander.

7. The results of the audit disclosed that the Police Department had incurred significant overtime expenses, often as a result of inappropriate and illegal conduct, especially in the Police Department's District 5, which was commanded by Capt. Bridget Bardua.

8. The audit disclosed that the Police Department spent millions of dollars in overtime with at least 15 officers bringing in tens of thousands of dollars in overtime each.

9. An inordinate amount of overtime centered in District 5, commanded by Capt. Bardua.

10. Capt. Bardua herself earned \$82,723 in overtime during the audit period. Sgt. Jason Scott, who also works in District 5 under Capt. Bardua's command, brought in \$92,215 in overtime.

11. According to the audit, the payments are part of a broader problem involving Police Department overtime and police officer intentional manipulation of overtime.

12. The result, the audit found, is excessive overtime payments and compensatory awards, which "enhance or maximize financial compensation for some personnel at the detriment of the department budget." (Exhibit A at p. 7.)

13. "These appear to be systemic management issues," the audit continues. "The failure to adhere to established processes has resulted in a significant and negative financial impact and places extensive financial liability on the [police] department." (*Id.*)

14. The overtime abuse in District 5 was so systemic and pervasive that the officers in District 5 had developed their own shorthand phrases for scams to obtain unearned overtime illegally.

15. Those scams -- which were disclosed by Capt. Butler to Respondents in a post-audit submission -- included the following:

Recall: Options related to investigate unit recalls.

- 1) Less than 1 hour at work...follows contract for pay but you get to go home and sleep in afterwards....come in when you can without a slip for missed hour

- 2) If you stay more than an hour and the call woke you up, the recall is paid for the 4 hours at 1.5 times the hours, and it covers your next work day as well...i.e. you stay home without submitting a slip..plus you go home when done no questions asked
- 3) If you are called and respond, the supervisor is on standby for first hour if not a serious life threatening offense. You call the supervisor and advise...he then submits a slip even if he did not show up...your investigative partner gets the same treatment..plus no work the next day

Captain on Call:	Call if anyone was looking for Capt. Bardua...work out or at home, etc.
Touch and Go:	Holidays or weekends...you show up for an hour and are seen by patrol personnel then leave, the next investigator comes in later and does the same until all are seen...the theory is if anyone asks if so and so was seen, the answer is always yes.
Hit and Skip:	For community meetings...spend no more than ten minutes and leave to maximize pay and limit time....Capt. Bardua did this then visited 9 pm roll call for 10 minutes for another 2 hour slip.
Pre-meetings:	Scam to meet with captain on paper before meetings to gain additional OT...she went home or left district to go home or elsewhere...no meeting occurred or was short in duration.
Pre-Meeting Prep:	Same theory as above by officer.
No Slip:	No slip for time off needed if your "government work" could not be tracked, i.e., Kids rides, games, etc.'
Uniforms Option:	Wear uniform only if meetings, shorts/casual clothes were ok for first few hours.
Work outs/Errands:	Investigators could work out, run errands, shop, etc. anywhere as long as radio or cell phone on.
Take home cars:	Assigned but not approved by the Police Chief.
Court Maximization:	Adjust hours to get court compensation or dead time.
Hours adjustment:	Adjust to work details or PVO.
15 minute slip:	Do not submit...see Hageman and Wheeler investigations and Form 17's.

Elimination of Non Team players: Transfer people for bogus reasons if they complained or did not participate or make their life miserable so they ask to leave.

16. Capt. Butler brought his concerns regarding overtime abuse directly to Capt. Bardua during the audit period.

17. In addition, he brought those same issues directly to Respondent Chief Isaac on several occasions, including most recently on February 10, 2018.

18. The prior evening (February 9, 2018), Capt. Butler had raised these issues again directly with Capt. Bardua, this time at her residence. (Butler and Bardua live on the same street.)

19. Due to the chronic health condition of a family member, Capt. Butler would occasionally have to be home during the week.

20. On each such occasion, he took personal time off and was not on the clock for duty or overtime purposes.

21. On those occasions, he routinely saw Capt. Bardua's City-issued vehicle at her residence during hours for which she claimed overtime or on duty.

22. Capt. Butler talked to Capt. Bardua about her abuse of the overtime system. She commented: "what happens on [our street] stays on [our street]."

23. Capt. Butler raised the same issues with Respondent Chief Isaac. He did nothing.

24. In addition, Capt. Butler would see Sgt. Voelkerding driving City-marked cars and unmarked vehicles at and near his residence during duty hours or when he was claiming overtime.

25. Capt. Butler raised these issues directly with Capt. Bardua and Respondent Chief Isaac. They did nothing.

26. In Capt. Butler's reasonable belief, the systemic abuse of overtime in District 5 headed by Capt. Bardua constituted felony theft.

27. Under Ohio Revised Code § 2921.22, Capt. Butler was compelled to report that abuse to law enforcement authorities.

28. He did so directly to Respondent Chief Isaac on numerous occasions.

29. On previous occasions when police officers or civilian staff had been found to have intentionally abused the overtime system, disciplinary action had been instituted against them.

30. On this occasion, Respondent Chief Isaac repeatedly refused to initiate any disciplinary investigative action against Capt. Bardua, or permit any other law enforcement officer to initiate disciplinary investigative action Capt. Bardua or those under her command.

31. Rather, Respondent Chief Isaac went out of his way to protect Capt. Bardua from the consequences of her abuse of the overtime system and her allowing officers in District 5 to abuse the overtime system.

32. Rather than discharge his duty and pursue disciplinary action against Capt. Bardua and those under her command who have flagrantly and illegally abused the overtime system, effectively stealing Cincinnati taxpayer monies for their personal gain, Respondent Chief Isaac has instead retaliated against Capt. Butler and other high-ranking Cincinnati police officers who had challenged his failure to act in regard to these matters.

33. The ouster of Executive Assistant Chief David Bailey in March 2018 following public release of the overtime audit is just one example.

34. In addition, Respondent Chief Isaac has effectively marginalized Capt. Butler in retaliation for his complaints about Respondent Chief Isaac's inappropriate relationship with

Capt. Bardua and failure to act on her abuse of the overtime system; Capt. Butler's role in supervising the audit; and Respondent Chief Isaac's mistaken belief that Capt. Butler was involved in the public disclosure of the overtime audit. Effective March 18, 2018, Respondent Chief Isaac transferred Capt. Butler to the Cincinnati Police Academy, but stripped him of any substantive responsibility.

35. Largely as a result of the allegations raised by Capt. Butler, including his allegations of felony abuse of overtime by Respondent Isaac's close personal friend and confidant, Capt. Bridget Bardua, and those under her command, Hamilton County Prosecutor Joseph Deters impaneled a Grand Jury.

36. The Grand Jury issued a Subpoena on April 27, 2018 for documents related to the February 2018 semi-annual Police Department Audit of overtime usage and Plaintiff's allegations regarding abuse of the CPD's overtime policy.

37. Deters also referred the matter to Ohio Auditor Yost for investigation.

38. During the course of Auditor Yost's investigation, the Auditor's investigative team requested supporting documentation for the Audit.

39. At least one banker's box containing numerous documents directly relevant to the Audit and, to the Auditor's investigation, and responsive to the Hamilton County Grand Jury Subpoena suddenly went missing.

40. The fact that those documents were missing was known to Respondent Isaac and Respondent City of Cincinnati since at least June 13, 2018.

41. Nonetheless, Respondents made no sincere effort to find those documents.

42. Rather, it was not until Capt. Butler was asked to meet with an investigator with the State of Ohio Auditor's Office that this issue was addressed.

43. Respondents' loss or destruction of these documents, and their lackadaisical attitude toward finding the documents, prompted Capt. Butler to ask the Acting City Manager (Patrick Duhaney) for an external administrative and/or criminal investigation on October 17, 2018. (See Exhibit B, attached.)

44. Rather than begin the external investigation Capt. Butler requested, Respondents instead began an internal investigation.

45. That internal investigation was not designed to find the missing documents or determine why they were missing; instead, it was designed to unfairly implicate Capt. Butler.

46. The investigation included a finding that resulted in the issuance of a reprimand to Capt. Butler on July 3, 2019.

47. Capt. Butler appealed that discipline to a Peer Review Panel and, on July 25, 2019, that Panel issued a unanimous award reversing the reprimand. (Exhibit C, attached.)

48. That award also found numerous substantial conflicts of interest and inappropriate conduct which undermined the integrity of the investigation and its conclusions. (*Id.*)

49. On August 5, 2019, counsel for Capt. Butler sent a letter to the City Solicitor for Respondent City of Cincinnati, asking her to confirm that not only was the reprimand removed from Capt. Butler's personnel files and ETS records, but that the underlying investigation itself would be removed from Capt. Butler's personnel files and ETS records, along with the vacating of all sustained findings. (Exhibit D, attached.)

50. The letter also requested that the City Solicitor confirm that Capt. Butler has not been, and will not be, placed on a Brady List as a result of the investigation which led to the reprimand that was reversed by the Peer Review Panel on July 25, 2019. (*Id.*)

51. To date, counsel for Capt. Butler has received no response through this inquiry from the City Solicitor for Respondent City of Cincinnati.

II. CLAIM FOR RELIEF

52. R.C. § 2731.01 provides that: “Mandamus is a writ, issued in the name of the state to an inferior tribunal, ... board, or person, commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station.”

53. R.C. § 2731.04 provides: “Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit.”

54. The award of the Peer Review Panel detailed above makes it clear that the investigation underlying the reprimand improperly imposed upon Capt. Butler was fatally flawed and irrevocably tainted against Capt. Butler.

55. Therefore, merely removing the reprimand from Capt. Butler’s personnel file and ETS records will not cure the problem, since the inappropriate investigation itself will remain in Capt. Butler’s personnel file and ETS records for future use against him.

56. Given that Respondents have a long track record of retaliation against Capt. Butler and others who challenge them, Capt. Butler is left without recourse to a potential inappropriate use of the tainted investigation by Respondents to further retaliate against him.

57. This Court should therefore issue a *writ of mandamus* compelling Respondents to remove from Capt. Butler’s personnel files and ETS records the investigation and report underlying the reprimand which was reversed by the Peer Review Panel on July 25, 2019, along with the vacating of all sustained findings, and confirmed that Capt. Butler has not been, and will not be, placed on a Brady List as a result of that investigation.

WHEREFORE, Relator requests relief from this Court as follows:

- a) A writ of *mandamus* directing Respondents to remove from Capt. Butler's personnel files and ETS records the investigation and report underlying the reprimand which was reversed by the Peer Review Panel on July 25, 2019, along with the vacating of all sustained findings, and confirmation that Capt. Butler has not been, and will not be, placed on a Brady List as a result of that investigation; and
- b) Such further and additional relief as is necessary and appropriate.

Respectfully submitted,

s/ Brian P. Gillan

Brian P. Gillan (0030013)

Randolph H. Freking (0009158)

Attorneys for Relator

FREKING MYERS & REUL LLC

600 Vine Street, 9th Floor

Cincinnati, OH 45202

PH: 513/721-1975 – FX: 513/651-2570

bgillan@fmr.law

randy@fmr.law

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2019, a copy of the foregoing was sent *via* electronic mail, as follows:

Paula Boggs Muething, City Solicitor

Email: *paula.boggsmuething@cincinnati-oh.gov*

City of Cincinnati Solicitor's Office

801 Plum Street, Suite 214

Cincinnati, OH 45202

/s/ Brian P. Gillan

Brian P. Gillan (0030013)
Randolph H. Freking (0009158)
Trial Attorneys for Relator

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Case No.: _____

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VERIFICATION AND AFFIDAVIT
OF JEFFREY L. BUTLER, JR.

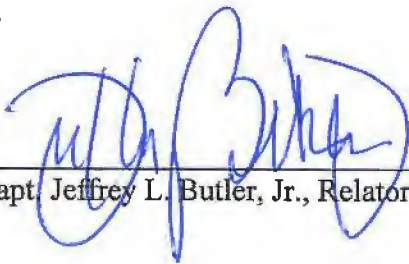
Before me, the undersigned Notary, personally came and appeared Capt. Jeffrey L.
Butler, Jr., who after being duly sworn, deposes and says as follows:

1. I am a resident of the State of Ohio, County of Hamilton.

2. I have reviewed the foregoing Verified Petition and Complaint for a *Writ of Mandamus, State Ex. Rel Butler v. City of Cincinnati*, which action is brought in the name of the State on my relation.

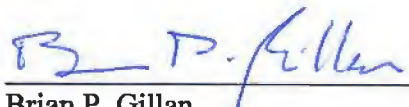
3. I have personal knowledge of the matters set forth in the Verified Petition and Complaint. The facts in the Verified Petition and Complaint are based on my personal knowledge.

FURTHER AFFIANT SAYETH NAUGHT.



Capt. Jeffrey L. Butler, Jr., Relator

Sworn to and subscribed before me on this 13th day of August, 2019.



Brian P. Gillan
Notary Public
BRIAN P. GILLAN
Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration
Date. Section 147.03 O.R.C.



Interdepartmental Correspondence Sheet

Date: February 15, 2018
To: Colonel Eliot K. Isaac, Police Chief
From: Lieutenant Colonel David J. Bailey, Executive Assistant Police Chief
Copies to:
Subject: **Semi-Annual Audit of Overtime**

In March of 2016, the City of Cincinnati Citizen Complaint and Internal Audit Department published an overtime audit of the Cincinnati Police Department (CPD). As a result of the audit, the Department was presented a number of recommendations relative to the usage of overtime. CPD agreed with many of those recommendations in their entirety, including a commitment to a semiannual overtime audit to be conducted by the CPD Inspections Section. The audit is necessary to ensure the Department is adhering to its commitment to minimize the use of overtime spending whenever possible. Inspections Section has completed the most recent audit which reviewed the top overtime earners by rank for pay periods 1 through 26 for 2017. Although the amount of overtime by itself cannot be the basis for making any determination as to justification, Department managers should at a minimum consider the following:

- Is the use of overtime absolutely necessary to fulfill the Departments mission?
- Is the allocation of overtime in each district/section/unit equitable?
- Are the working hours of the various Department units in line with actual service needs? For example, if very little community interaction takes place in the early morning hours, neighborhood and investigative units may achieve more outreach services in the late afternoon hours without the reliance on overtime.
- For planned meetings and events occurring just before or after a shift, overtime should be controlled by adjusting working hours as permitted by the current labor contract.
- The labor contract also permits the Department to utilize four discretionary off day changes per year to minimize the usage of overtime.
- Adjusting starting and ending shift times to maximize compensation is also prohibited

Another issue which has surfaced in this particular audit pertains to the use of the PVO funds allocated by Council. As Inspections Section has learned, there are some Department units who are operating under the premise PVO paid in compensatory time can be utilized **in addition** to their monetary allotment. Essentially, the belief is PVO paid in time is not of budgetary consequence to the Department. Recommend the audit summary be distributed to each Department bureau for review and any appropriate action deemed necessary.

DJB/djb



This audit examines overtime allocation in the following formats:

- Aggregate spending trends by overtime category
- Aggregate overtime spending by Department bureaus and units
- Top overtime earners by rank
- Random overtime audits by Department unit
- Preliminary Findings

I. Annual Usage of Overtime by Category:

Department Overtime is usually categorized into three broad categories:

- Contingency Overtime – Overtime incurred as a result of preplanned or large events or programs such as dignitary protection some PVO projects, demonstrations and SWAT functions. In some cases, management can control these expenditures through planning and controlling the numbers of personnel needed for these events. Patron and officer safety are large factors to consider
- Court Overtime – Overtime incurred as a result of officers being needed to assist with case prosecution in the various court layers. Management can control overtime by ensuring personnel adhere to court control and attendance procedures.
- Increment Overtime – Overtime associated with achieving the Department's various operational needs and mission. Much of this overtime is subjective and largely controlled or at the discretion of Department managers.

Looking at the spending in each of these categories since 2012 it's evident the use of Contingency and Increment overtime has sharply increased:

	<u>Contingency</u>	<u>Court</u>	<u>Increment</u>
2012	630,525.00	3,036,201.00	1,422,154.00
2013	362,886.00	3,016,205.00	1,411,745.00
2014	1,693,720.00	2,605,712.00	1,942,377.00
2015	2,133,814.00	2,495,326.00	2,244,677.00
2016	1,992,486.00	2,399,045.00	2,699,236.00
2017	2,261,738.00	2,373,350.00	2,739,658.00
2017 Budget Amounts	750,000.00	2,700,000.00	2,150,000.00

Contingency Overtime grew in 2014 due in part to the restoration of PVO funding being added to this category. On the other hand, Court overtime has declined in line with decreased enforcement numbers. Increment overtime has grown due in part to increased expenditures in Events, Investigations, Recall, Meetings, Personnel Shortage and Teaching. In 2016, the budget was modified to also capture expenditures by the Emergency Communications Section.

II. Overtime (PAY) Spending By Bureau:**Patrol Bureau**

	District 1	District 2	District 3	District 4	District 5	CBS	Total
2012	44,708.00	41,804.00	137,269.00	111,184.00	78,091.00	136,923.00	549,979.00
2013	44,532.00	62,378.00	152,955.00	71,585.00	120,548.00	101,213.00	553,211.00
2014	97,580.00	100,344.00	237,280.00	132,544.00	165,959.00	12,345.80	746,052.80
2015	111,556.00	102,183.00	278,478.00	209,505.00	239,923.00	47,973.40	989,618.40
2016	144,556.00	115,480.00	324,063.00	173,408.00	251,063.00	63,072.00	1,071,642.00
2017	148,438.00	104,363.00	308,666.00	163,082.00	240,557.00	40,540.00	1,005,646.00

*Period in 2017 where overtime spending for pay curtailed

Investigations Bureau (CIS and SIS Combined)

2012	
2013	
2014	416,541.00
2015	481,840.00
2016	467,611.00
2017	558,968.00

Support Bureau

	ECS	Personnel	Training	Logistics/EPM
2012				
2013				
2014		6,766.00	78,620.00	37,011.00
2015		20,026.00	149,349.00	37,090.00
2016	102,854.00	19,540.00	94,288.00	72,764.00
2017	582,667.00	w/Logistics	57,903.00	89,412.00

Administration Bureau

	Internal	Inspections	PIO	Planning	ITMS
2012					
2013					
2014	w/ Chief's	17,894.00	88,575.00	w/ Inspections	6,086.00
2015	w/ Chief's	20,339.00	w/ Chief's	w/ Inspections	7,215.00
2016	w/ Chief's	16,978.00	w/ Chief's	w/ Inspections	w/ ECS
2017	42,945.00	20,287.00	8,129.00	w/ Inspections	2,056.00

III. Overtime (TIME) Incurred By Bureau:

1.5 rate in number of hours
Does not include court

Patrol Bureau

	District 1	District 2	District 3	District 4	District 5	CBS	Total
FY2014	777.00	1146.70	1016.50	1332.50	900.95	515.95	5689.6
FY2015	1047.95	1532.55	1458.13	1064.90	809.10	637.85	6550.48
FY2016	857.27	1770.55	1646.26	1722.35	994.65	347.88	7338.96
FY2017	796.22	1961.05	1809.98	2105.20	2174.30	336.5	9183.25

*Period In 2017 where overtime spending for pay curtailed

Investigations Bureau (CIS and SIS Combined)

2012	
2013	
2014	586.20
2015	1283.90
2016	1284.07
2017	689.77

Support Bureau

	ECS	Personnel	Training	Logistics/EPM
2012				
2013				
2014		32.40	233.60	160.30
2015		35.55	844.95	447.2
2016	6488.48**	28.50	607.25	448.92
2017	8208.55	38.70	512.10	457.05

** CAD System Deployment and Training Included: Source of payment Fund 364

Administration Bureau

	Internal	Inspections	PIO	Planning	ITMS
2012					
2013					
2014	28.75	0.00	94.25	76.50	13.50
2015	103.00	37.35	In Chief's	91.20	17.25
2016	331.5	136.5	In Chief's	11.25	88.65
2017	9.45	9.0	88.00	36.75	283.70***

*** 911 Phone System Installation Included

IV. Top Overtime Earners by Rank:

Rank	First Name	Last Name	Assignment	OT Total Hours (Pay and Time)	Financial Impact
Captain	Bridget	Bardua	Five	1,054	\$82,723.13
Captain	David	Fink	ECS	806.25	\$63,278.48
Captain	Aaron	Jones	Three	775.95	\$60,900.39
Captain	Lisa	Davis	One	570	\$44,736.42
Captain	James	Gramke	Two	484.25	\$38,006.83

Rank	First Name	Last Name	Assignment	OT Total Hours (Pay and Time)	Financial Impact
Lieutenant	David	Johnston	CIS	600.9	\$40,656.55
Lieutenant	Mark	Burns	Four	512.90	\$34,702.52
Lieutenant	Christine	Briede	Intelligence	464	\$31,393.98
Lieutenant	Andrew	Mitchell	Four	416.25	\$28,163.24
Lieutenant	David	Schofield	SSS	404.35	\$27,358.09

Rank	First Name	Last Name	Assignment	OT Total Hours (Pay and Time)	Financial Impact
Sergeant	Jason	Volkerding	Five	2,164.10	\$126,225.67
Sergeant	Jason	Scott	Five	1581	\$92,215.14
Sergeant	Ronald	Hale	Patrol Admin	1,478.65	\$86,245.36
Sergeant	Timothy	Lanter	ECS	1,177.83	\$68,899.40
Sergeant	Colin	Vaughn	Five	1011.79	\$59,014.77

V. Random Audit Process:

Inspections Section is continuing in the Semi-Annual Audit pursuant to the agreed upon provisions of the City of Cincinnati Citizen Complaint and Internal Audit Report dated March 2016, Inspections Section Standard Operating Procedures and established best practices related to financial management.

The purpose of the audit is to ensure compliance to the rules, regulations, procedures and policies associated with the management of employee activity. The audit focuses on compensation and finance management mandates, while presenting recommendations to enhance all categories presented in the report.

The intent of the report is to provide the necessary information to assist the Senior Command Staff in achieving sound financial management of the Department. The audit findings, conclusions and recommendations for the purposes of this report are intentionally presented generically. Specific or individual District/Section/Unit findings are attached to the report and have been provided to the affected Bureau and District/Section commanders for their review.

Corrective or administrative action will be left to the direction of the Police Chief and Senior Command Staff.

The methodology for the audit included reviews of:

- Management and Oversight.
- Lineups.
- Work hour comparison (published in the assignment report and actual).
- Procedure compliance.
- Contract compliance.
- Overtime: PVO, Court and City sponsored activity via Form 68P.
- Overtime: Outside Employment Extension of Police Services Details at 1.5 Rate of Pay (Reimbursable).
- Outside Employment Extension of Police Services Details (Off-Duty Rate).
- Supervisor Monitoring Reporting.
- Sick Time Usage.
- Patterns of Conduct
- Financial Impact on the Department and City of Cincinnati.
- Technology Capacity.

The following Department units were audited:

- District One Investigative Unit.
- District Two Neighborhood Liaison Unit.
- District Three Violent Crimes Squad.
- District Four Third Shift.
- District Five Neighborhood Liaison Unit.
- Central Business Section.
- Criminal Investigation Section Major Offenders Unit.
- Emergency Communications Section.
- Special Investigations Section Narcotics Unit.

VI. Preliminary Findings:

The audit reveals a majority of Department personnel are conforming to the established rules, regulations, procedures and policies associated with the management of employee activity, compensation and finance management mandates. The audit highlights a small fraction of management and personnel actions are disproportionately negatively impacting the Department Budget.

Department policy on the matter is clearly spelled out in Procedure 12.825 Compensatory Time and Paid Overtime which states in part:

Avoid overtime whenever possible. All personnel will strive to reduce overtime hours worked.

Supervisors will consider the use of on-duty personnel or will adjust the employee's hours rather than scheduling overtime, if contractually permissible. Pertinent provisions of the contract dealing with shift separation and shift changes must also be considered.

However, the audit findings have revealed significant concerns and/or violations of basic management principles, documentation, oversight, and policy/procedure infractions. These include, but are not limited to, manipulations of the labor agreement and management oversight to enhance or maximize financial compensation for some personnel at the detriment of the Department budget.

Keep in mind the forensic portion of the audit only examined top overtime earners by rank and Department Units identified in the contents of the external audit. Based on the analysis of payroll related documents or in many cases lack of required documentation altogether for this limited sample size, Inspections Section believes there is enough evidence to suggest there is a lack of management oversight which has caused significant negative financial impact to the Department. Although this is our preliminary belief, a true forensics analysis involving all personnel records would be required to confirm this notion with any degree of certainty. These appear to be systemic management issues as they have been the central theme of prior audits and reports previously submitted by Inspections Section, internal investigations, District/Section/Unit level complaints in addition to external audits conducted by other City Departments.

Also as referenced in previous reports, deficiencies related to existing Department technology and the inability for disparate systems to compare or contrast data sets are impacting management capabilities. Generally, speaking, the "silo effect" of data warehousing coupled with technology deficiencies limits the ability to monitor activity in real time. Historic examination is also limited due to the various systems inability to keep up with organizational or coding changes associated with the numerous Department units and sections.

The information which was available for review indicates either individual or organizational patterns involving violations of the following directives:

- The Department Policy and Procedures.
- The Manual of Rules and Regulations and Disciplinary Process.
- Labor Agreement between Fraternal Order of Police Queen City Lodge 69 and the City of Cincinnati.

After the previous semiannual audit of overtime conducted in July of 2017, Inspections Section began to understand the magnitude of the management oversight issue at the line levels of the organization. As a result, Inspections Section developed a plan to address these shortcomings from a centralized perspective. Those recommendations included increased regulation, control and management related to employees who were engaged in activities related to Outside Employment Extension of Police Services Details. This proposal also included services compensated at the overtime rate as well as the specific financial mandates established by City of Cincinnati Ordinances.

The audit indicates a number of issues pursuant to the payment of Department overtime funds. They can best be categorized in three categories:

1. Organizational Issues.
2. Individual Employee Actions.
3. Procedural and Timekeeping.

Organizational Issues:

The City of Cincinnati Citizen Complaint and Internal Audit Report submitted in March of 2016 contains findings relative to their assessment of Department overtime and offers sixteen specific recommendations to improve Department accountability in this area. The Department is still working on achieving complete compliance with all of the agreed upon recommendations.

To be balanced in our assessment we feel the Department has a significant number of District/Section/Units which are generally meeting their management obligations, incurring only a few modest clerical or management oversight failures. On the other hand, the audit has found patterns of failures involving basic supervisory and administrative obligations. These include but are not limited to:

- Lack of documentation to support the allocation of PVO funds.
- Lack of documentation reporting the outcomes of PVO expenditures.
- Non-compliance with the review and accuracy of the monthly Assignment Report.
- Inaccurate Lineups or Forms 202, including conflicting start/end times, missing Forms 25s, 440 and 443 and omissions of personnel or duty hours.

Note: These reports were processed and approved at multiple levels of supervisory and command review.

- Misapplication or circumvention of the provisions of the Labor Agreement.
- Failure to investigate and/or issue corrective action for work activity violations.
- Non-compliance with the provisions of Procedures:

- 12.815: Court Appearances, Jury Duty, and Other Hearings
- 12.816: On-Call Court Appearances
- 12.817: Court Management System (CMS)
- 12.820: Compensation for Court Attendance, Hearings and Other Administrative Recalls
- 12.825: Compensatory Time and Paid Overtime

Individual Employee Actions:

The violations range from improper or unearned compensation to failures to submit procedurally mandated documents required for record keeping and/or billing for services mandated by City of Cincinnati Ordinance. In addition to violations of Department directives or policies, there are also ethical issues to also consider.

- Court Compensation: Officers have been identified submitting for compensation from the City of Cincinnati and outside employers for court appearance occurring at the same time.
- Court Compensation: Officers with a pattern of conduct related to intentionally adjusting duty hour assignments to maximize earning overtime for court. Additionally, some of these appearances should have been addressed in an "on duty" or "on call" status.
- Court Compensation: Officers compensated by the City of Cincinnati for activity resulting from Outside Employment Extension of Police Services Details.
- Court Compensation resulting from violations the Primary Officer Concept.
- Court Compensation: Patterns of conducts resulting in unauthorized "Dead Time" compensation
- Duty Hour Adjustment to facilitate Outside Employment Extension of Police Services Details as opposed to Department primary tasks.
- Double Pay for On Duty activity and increment overtime or outside Employment Extension of Police Services Details
- Duty Hour Adjustment without completion of procedurally mandated Department Voluntary Shift Deviation Forms.
- Failure to submit Forms 25S Leave of Absence Forms to comply with Procedure mandates requiring a fifteen minute separation in duty hours. In extreme instances, there have been a substantial number of failures attributed to a single officer.
- Failure to investigate and document procedure violations related to employee conduct.
- Patterns of abuse of sick-time in conjunction with increment overtime.
- Patterns of conduct to avoid the contractually permitted adjustment of work hours by two or less hours, which resulted in extensive overtime obligations.
- Patterns of adjustment of Duty Hours to maximize overtime opportunities.
- Patterns of overtime opportunities re-assignment to isolated groups.
- Failure to supervise and monitor employee activity.
- Failure to review and approve overtime compensation.
- Inconsistent compensation related to Shift Deviation compensation.
- Inordinate amounts of overtime awarded to selected officers and supervisors. Overtime not equitable distributed across the unit.
- Supervisors and officers awarding themselves overtime for task(s) which could have been performed by on duty personnel by partaking and/or authorizing unnecessary functions to earn overtime compensation or time.

Procedural and Timekeeping Issues:

The City of Cincinnati Citizen Complaint and Internal Audit Report submitted in March of 2016 contains specific findings related to accounting and timekeeping functions to better manage compensation. These are found specifically in recommendations 6,7,8,9,10,11 and 12 of that report.

Although the Department continues to implement the recommendations contained in the report, this audit echoed some of the same issues. The audit revealed significant differences in how individual timekeepers interpret:

- The provisions of the Labor Agreement.
- The provisions of Department Policy and Procedures.

Additional factors which have impacted the Timekeepers ability to properly account for overtime include:

- Supervisor failures in the review and approval process related to employee activity.
- Supervisor/Command level management failures in the supervision of timekeeper activity and calculations of overtime.

These failures have not only resulted in significant financial loss to the Department but also constitute many missed opportunities to minimize overtime.

VII. Recommendations:

A comprehensive review of the audit packet by the Police Chief and Senior Command Staff to determine the actions moving forward to address the issues presented.

These include:

- Complete a full implementation of the recommendations outlined in The City of Cincinnati Citizen Complaint and Internal Audit Report submitted in March of 2016.
- Implement recommendations made by the Inspections Section to enhance their ability to effectively manage overtime and extension of police service opportunities.
- Procedure revisions where necessary.
- Form revisions to better describe overtime and work status.
- Organizational accountability at all levels, including ensuring adherence to policies and procedures, including supervisory intervention and education.
- Enhanced auditing capacity.
- Fully investigate all infractions or violations identified in the audit.
- Progressive disciplinary actions for violations up to and including termination if warranted.
- Determine how best to utilize the proposed Kronos Personnel System to optimally manage personnel and overtime use.
- Centralize the Court Compensation Timekeeping Function.
- Centralize the Detail Coordination Functions.

- Integrate Finance Management into on-going overtime reporting functions, to include pay and time reports.
- Should there be any questions or challenges to the validity of the findings contained within this report, a third party independent review should be requested.
- Written requests and justification for the allocation of non-emergency PVO Funds to include a statement of the issue or problem to be addressed, an associated plan of action with expected results/timeline. Additionally, the completion of a final report detailing the results and recommendations for further implementation of the plan when similar issues are presented in other areas of the City.

VIII. Conclusion:

In conclusion, the Police Department has policies, procedures, reporting processes and rules in place to manage and monitor employee activity and compensation. We contend the Department policy is quite clear in this regard.

The audit finds regimented and/or highly supervised mission oriented units generally realize only minor clerical errors and do not disproportionately contribute to issues detailed in the report. Assignments with lax or overly flexible supervision are particularly problematic and result in significant and continued patterns of negative conduct. Commanders must remain attentive and engaged in the oversight of these units.

However a clear pattern of the failure to inspect and manage the process has been revealed in a number of Districts/Sections/Units or by individual officers and supervisors. The failure to adhere to the established processes has resulted in a significant negative financial impact and places extensive financial liability on the Department. The basis of the failure may range from intentional actions to maximize compensation or possibly a general misunderstanding of basic management principles.

Inspections Section believes these findings in some cases are serious as well as potentially systemic. That being said, we would recommend the Department formulate a strategy to mitigate these conditions as soon as possible. Inspections Section would support being part of a Department wide effort organized for this purpose.

DJB/JLBJ



Date: October 17, 2018

To: Patrick A. Duhaney, Acting City Manager
From: Captain Jeffrey L. Butler Jr., Training Section Commander
Copies to:
Subject: Request for External Administrative and or Criminal Investigation: Public Records

On October 17, 2018 at 1300 hours, I met with Mr. Kevin Baute, Investigator with the State of Ohio Auditor's Office and Lieutenant Colonel (Ltc.) Teresa Theetge reference the Police Department Annual Audit completed in February 2018. The purpose of the meeting was to review the Annual Audit calculations submitted by Lieutenant Colonel David Bailey and myself.

Prior to the meeting, I received an email on October 11, 2018 at 0903 hours from Lieutenant Colonel Theetge indicating (cut and paste from separate email) that Mr. Baute was requesting supporting documentation for the Audit. Specifically:

"I will have my calculations and what I came up with at that time as well to compare. In preparation for the meeting, I will probably want to take a copy of his calculations with me after the meeting to review and for support. If that can be requested and ready for the meeting that would be helpful."

On October 11, 2018 at 0938 hours, I responded via email to Ltc. Theetge requesting permission to contact Mr. Baute for clarification on the agenda. Ltc. Theetge replied via email at 1343 hours she would clarify the request. (attached)

At 1344 hour, Ltc. Theetge replied via email:

"Just FYI. It is my understanding that he simply wants to know how you came up with the dollar amounts that were listed in the audit."

At 1347 hours, I replied via email

"There is a significant amount of documentation including notes, electronic files and paper copies. plus files supplied by fiscal and ITMS that are in the bankers box"

"If I know specifically what he needs or have an agenda that will help. Otherwise we will spend a lot of time just searching for specific."

On October 16, 2018 at approximately 0845 hours, Ltc. Theetge with Captain Dennis Swingley contacted me via telephone concerning the location of the Audit supporting documents. I advised the information was clearly marked and secured at Inspections Section prior to the transfers of Lieutenant Barbara Young, Sergeant Douglas Frazier and myself. Ltc. Theetge advised the documents could not be located.

On October 17, 2018, at 0740 hours, Captain Swingley advised he had conducted another search of the Inspections Section offices and were unable to locate the documents.



The lack of maintenance and securing the documents is significant and has been known to the Department since at minimum June 13, 2018. Specifically: I was contacted by Captain Swingley via telephone concerning the location of the documents pursuant to a request from Ltc. Theetge. I advised the documents were maintained at Inspections Section. I advised a portion of the documents were available from Assistant City Solicitor Julie Bissinger, pursuant to her representation of the City, Ltc. Paul Neudigate, Ltc. Bailey and myself as related to an EEOC complaint filed by Captain Bridget Bardua.

On June 14, 2018 Captain Swingley advised via email:

"Ltc Theetge said she would ask Sarah Bissinger for the records."

The lack of availability of the documents and inspections notes is a significant issue and places extensive liability on the Police Department and the City of Cincinnati. These include but not limited to:

- Adherence to Ohio Public Records Law
- Compliance with a subpoena issued to the City of Cincinnati by the Hamilton County Grand Jury on April 27, 2018.
- Response and defense of the EEOC complaint filed by Captain Bardua for the City, Ltc. Neudigate, Ltc. Bailey and myself.
- Plaintiff and Defense response in the matter of Butler v. City of Cincinnati Ohio et al. Ohio Southern District Court Case 1:17-cv-00604.

I respectfully request an independent external Administrative and or Criminal Investigation related to securing and maintenance of Public Records as mandated by the Ohio Revised Code. I believe an external investigation is necessary due in part to the conflict of interests presented in this document to ensure the investigation integrity, the disclosure of additional information from witnesses employed by the City of Cincinnati and to protect and preserve rights of individuals involved in administrative or legal proceeding.

JLBJ

2913.42 Tampering with records.

(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:

- (1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;
- (2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.

(B)

(1) Whoever violates this section is guilty of tampering with records.

(2) Except as provided in division (B)(4) of this section, if the offense does not involve data or computer software, tampering with records is whichever of the following is applicable:

(a) If division (B)(2)(b) of this section does not apply, a misdemeanor of the first degree;

(b) If the writing or record is a will unrevoked at the time of the offense, a felony of the fifth degree.

(3) Except as provided in division (B)(4) of this section, if the offense involves a violation of division (A) of this section involving data or computer software, tampering with records is whichever of the following is applicable:

(a) Except as otherwise provided in division (B)(3)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the value of the data or computer software involved in the offense or the loss to the victim is one thousand dollars or more and is less than seven thousand five hundred dollars, a felony of the fifth degree;

(c) If the value of the data or computer software involved in the offense or the loss to the victim is seven thousand five hundred dollars or more and is less than one hundred fifty thousand dollars, a felony of the fourth degree;

(d) If the value of the data or computer software involved in the offense or the loss to the victim is one hundred fifty thousand dollars or more or if the offense is committed for the purpose of devising or executing a scheme to defraud or to obtain property or services and the value of the property or services or the loss to the victim is seven thousand five hundred dollars or more, a felony of the third degree.

(4) If the writing, data, computer software, or record is kept by or belongs to a local, state, or federal governmental entity, a felony of the third degree.

Amended by 129th General Assembly File No. 29, HB 86, §1, eff. 9/30/2011.

Effective Date: 03-30-1999 .

Related Legislative Provision: See 129th General Assembly File No. 29, HB 86, §4 .

Butler, Jeff (Captain)

From: Butler, Jeff (Captain)
Sent: Thursday, October 11, 2018 1:47 PM
To: Theetge, Teresa
Subject: Re: Meeting

There is a significant amount of documentation including notes, electronic files and paper copies. Plus files supplied by fiscal and ITMS that are in the bankers box

If I know specifically what he needs or have an agenda that will help. Otherwise we will spend a lot of time just searching for specifics

Sent from my iPhone

On Oct 11, 2018, at 1:43 PM, Theetge, Teresa <Teresa.Theetge@cincinnati-oh.gov> wrote:

I have a call into the auditor on another topic. I'll clarify with him when he calls me. Thanks

Sent from my iPhone

On Oct 11, 2018, at 9:38 AM, Butler, Jeff (Captain) <Jeff.Butler@cincinnati-oh.gov> wrote:

Ma'am

Is it ok if I contact the auditor to clarify the agenda and what he needs in advance?

Jeff

From: Theetge, Teresa
Sent: Thursday, October 11, 2018 9:03 AM
To: Butler, Jeff (Captain)
Subject: Meeting

Jeff

We will be meeting with the Auditor's representative on Wednesday October 17th at 1:00. I will send out a calendar invite. Please see his request below.

"I will have my calculations and what I came up with at that time as well to compare. In preparation for the meeting, I will probably want to take a copy of his calculations with me after the meeting to review and for support. If that can be requested and ready for the meeting that would be helpful."

Thanks
TAT

Butler, Jeff (Captain)

From: Theetge, Teresa
Sent: Thursday, October 11, 2018 1:45 PM
To: Butler, Jeff (Captain)
Subject: Re: Meeting

Just FYI. It is my understanding that he simply wants to know how you came up with the dollar amounts that were listed in the audit.

Sent from my iPhone

On Oct 11, 2018, at 9:38 AM, Butler, Jeff (Captain) <Jeff.Butler@cincinnati-oh.gov> wrote:

Ma'am

Is it ok if I contact the auditor to clarify the agenda and what he needs in advance?

Jeff

From: Theetge, Teresa
Sent: Thursday, October 11, 2018 9:03 AM
To: Butler, Jeff (Captain)
Subject: Meeting

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"I will have my calculations and what I came up with at that time as well to compare. In preparation for the meeting, I will probably want to take a copy of his calculations with me after the meeting to review and for support. If that can be requested and ready for the meeting that would be helpful."

Thanks
TAT

Butler, Jeff (Captain)

From: Butler, Jeff (Captain)
Sent: Thursday, June 14, 2018 12:16 PM
To: Swingley, Dennis
Subject: RE: Documents

ok

From: Swingley, Dennis
Sent: Thursday, June 14, 2018 9:47 AM
To: Butler, Jeff (Captain)
Subject: Re: Documents

LtC. Theetge said she would ask Sarah Bissinger for the records.

Dennis Swingley
Sent via my cellphone

On Jun 14, 2018, at 08:42, Butler, Jeff (Captain) <Jeff.Butler@cincinnati-oh.gov> wrote:

Dennis,

Did you find the Inspections Section Audit supporting documents for the Audit or do you need copies of my copies?

Jeff

Captain Jeffrey L. Butler Jr.
Cincinnati Police Department
Training Section Commander
800 Evans Street
Cincinnati, Ohio 45204
513-357-7560

Butler, Jeff (Captain)

From: Butler, Jeff (Captain)
Sent: Wednesday, June 13, 2018 10:30 AM
To: Swingley, Dennis
Subject: FW: Audit Binders

FYI

From: Butler, Jeff (Captain)
Sent: Wednesday, March 07, 2018 10:50 AM
To: Bailey, David
Cc: Bowling, Donna
Subject: Audit Binders

Colonel

FYI and record keeping. I have removed an Audit Binder from your office and provided it to the Chief. The copy is for the Manager. The third copy is in your office. Barb is making copies of the binder for the Ms. Bissinger and expected records requests.

Captain Jeffrey L. Butler Jr.
Cincinnati Police Department
Inspections Section Commander
310 Ezzard Charles Drive
Cincinnati, Ohio 45202
513-352-3179

Butler, Jeff (Captain)

From: Butler, Jeff (Captain)
Sent: Wednesday, June 13, 2018 10:29 AM
To: Swingley, Dennis
Subject: FW: F17 request for legal services

Fyi

From: Butler, Jeff (Captain)
Sent: Wednesday, March 07, 2018 8:32 AM
To: Isaac, Eliot
Cc: Bailey, David; Neudigate, Paul; Bissinger, Julie
Subject: RE: F17 request for legal services

Chief,

Thank you, I the quick response from the Solicitor is appreciated.

I have spoken to Ms. Bissinger and will meet with her this week after she reviews the files. I have notified Colonel Bailey and Colonel Neudigate that Ms. Bissinger will represent us as lead attorney in the matter.

I will begin compiling and provide all documents associated with the audit, process and relevant documentation (current or historical) related to the other claims in the EEOC notice and Form 17 for her review, the FOP and/or private council.

Jeff

From: Isaac, Eliot
Sent: Tuesday, March 06, 2018 10:44 AM
To: Butler, Jeff (Captain)
Subject: Fwd: F17 request for legal services

Captain Butler,

Please see response from the law department.

Colonel Eliot K. Isaac
Police Chief
Cincinnati Police Department
513-352-3536
eliot.isaac@cincinnati-oh.gov

----- Original message -----

From: "Boggs Muething, Paula" <Paula.BoggsMuething@cincinnati-oh.gov>
Date: 3/6/18 10:33 AM (GMT-05:00)
To: "Isaac, Eliot" <Eliot.Isaac@cincinnati-oh.gov>, "Black, Harry" <Harry.Black@cincinnati-oh.gov>
Subject: RE: F17 request for legal services

Chief Isaac: Thank you for forwarding Capt. Jeff Butler's request for outside legal counsel. This office is charged with representing the City and its employees in their official capacity. In an EEOC investigation, there is minimal agency interaction, no depositions, and no individual liability. While employees may engage their own counsel at their own cost, there is no obligation on the part of the City to retain outside counsel for individual employees. Rather, as a member of the bargaining unit, Capt. Butler may obtain the services of FOP counsel, or pay for his own attorney if he thinks it is necessary. In any event, our office is not conflicted in representing the City in this matter. We will assign it to a different attorney than those involved in Capt. Butler's federal case. Feel free to forward this email to Capt. Butler, and he can follow up with Julie Bissinger in this office regarding the EEOC matter. Thanks, Paula



Paula Boggs Muething
City Solicitor
Law Department
513/352-3320 (o) | 513/352-1515 (f)
paula.boggsmuething@cincinnati-oh.gov

----- Original message -----
From: "Boggs Muething, Paula" <Paula.BoggsMuething@cincinnati-oh.gov>
Sent: Tuesday, March 06, 2018 7:23 AM
To: "Isaac, Eliot" <Eliot.Isaac@cincinnati-oh.gov>, "Black, Harry" <Harry.Black@cincinnati-oh.gov>
Subject: Fwd: F17 request for legal services

From: Isaac, Eliot
Sent: Tuesday, March 06, 2018 7:23 AM
To: Boggs Muething, Paula <Paula.BoggsMuething@cincinnati-oh.gov>; Black, Harry <Harry.Black@cincinnati-oh.gov>
Subject: Fwd: F17 request for legal services

Communication with counsel:

FYI, just received.

Colonel Eliot K. Isaac
Police Chief
Cincinnati Police Department
513-352-3536
eliot.isaac@cincinnati-oh.gov

----- Original message -----

From: "Butler, Jeff (Captain)" <Jeff.Butler@cincinnati-oh.gov>
Date: 3/6/18 7:09 AM (GMT-05:00)
To: "Isaac, Eliot" <Eliot.Isaac@cincinnati-oh.gov>
Cc: "Bailey, David" <David.Bailey@cincinnati-oh.gov>, "Neudigate, Paul" <Paul.Neudigate@cincinnati-oh.gov>
Subject: F17 request for legal services

Chief

Pursuant to my email March 5th, I will submit/hand carry the attached Form 17 to your office today

Jeff

Captain Jeffrey L. Butler Jr.
Cincinnati Police Department
Inspections Section Commander
310 Ezzard Charles Drive
Cincinnati, Ohio 45202
513-352-3179

PEER REVIEW PANEL AWARD

Grievance # 24-2019 was heard by the undersigned panel on Captain Jeffrey Butler

The suspension / reprimand imposed by the City is (circle one) sustained / reversed / or reduced. If reduced, the penalty shall be _____

COMMENTS

After reviewing the evidence presented, the Peer Review Panel has determined
that the investigation found several conflicts of interest.

The Panel identified the following:

- A direct financial relationship between evidence of the investigation
and investigative body.
- Due to the extensive Captain's involvement, the best investigator

Craig A. Grayson
Panel Member Name

Doug Wiesman
Panel Member Name

Panel Member Name

[Signature]
Panel Member Signature

Doug M. Wiesman
Panel Member Signature

Panel Member Signature

continued
DISSENT etc.
(IF APPLICABLE)

was potentially in a position to breach from a documented finding of
Captain Butler.

- while being implicated in the investigation, the Panel has extended
discretion to this investigation prior to the
conclusion of the investigation.

Panel Member

At least two members must agree on sustaining, reversing, or reducing a penalty for decision to be final. No deadlocks are permitted.

The Panel believes that because of these conflicts identified, one could consider that the investigation not fair or objective which further lends to the validity of the sustained finding.

EXHIBIT

C

tabbies

Freking Myers & Reul
ADVOCATES FOR WORKING PEOPLE

Freking Myers & Reul LLC
www.fmr.law

August 5, 2019

Brian P. Gillan
513-592-2312
bgillan@fmr.law

Randolph H. Freking¹
Kelly Mulloy Myers²
George M. Reul, Jr.
Mark W. Napier³
Jon B. Allison
Katherine Daughtrey Nelf
Laura Welles Wilson
Erin M. Heidrich³
Elizabeth Asbury Newman

Of Counsel:
Jeffrey M. Betz³
Charles T. McGinnis, III
Brian P. Gillan
John P. Concannon

Dayton Office:
Jeffrey M. Silverstein

¹ Admitted in Colorado, Kentucky, and Ohio
² Admitted in Kentucky and Ohio
³ Admitted in Colorado

Cincinnati
600 Vine Street, Ninth Floor
Cincinnati, Ohio 45202
(513) 721-1975 Office
(513) 651-2570 Fax

Dayton
One Elizabeth Place, Suite 220
Dayton, Ohio 45417
(937) 228-3731

Denver
999 18th Street, Suite 3000
Denver, Colorado 80202
(303) 357-2355

VIA ELECTRONIC MAIL

(paula.boggsmuething@cincinnati-oh.gov)

Paula Boggs Muething
City Solicitor
City of Cincinnati
801 Plum Street, Room 214
Cincinnati, OH 45202

Re: *Captain Jeffrey Butler, Jr.*


Dear Paula:

On July 25, 2019, a Peer Review Panel issued an award reversing the Reprimand issued to Capt. Butler on July 3, 2019. You are no doubt aware of the Peer Review Panel's decision, since we understand your office was intimately involved in the process which resulted in Capt. Butler's Reprimand. Nonetheless, I am enclosing a copy of the Peer Review Panel's award. The Peer Review Panel's unanimous award can only be described as a scathing indictment of the way the underlying investigation was conducted.

We are aware that on July 29, 2019, Lieutenant Colonel Theetge instructed Joe Wilson, Captain Neville, and Jim Olthaus to remove the Reprimand from Captain Butler's personnel files and ETS records. However, we are writing to you in order to obtain your assurance and confirmation that the underlying investigation itself will also be removed from Captain Butler's personnel files and ETS records, along with the vacating of all sustained findings. Moreover, I need your written confirmation that Captain Butler has not been, and will not be, placed on a Brady list as a result of the investigation which led to the Reprimand that was reversed by the Peer Review Panel on July 25, 2019.

Time is of the essence in this matter, and I therefore request a reply to this letter by 5:00 p.m. (Eastern Time) on Friday, August 9, 2019.

Cordially,



Brian P. Gillan
BPG/ad
Enclosure
cc: Captain Jeffrey Butler, Jr.



PEER REVIEW PANEL AWARD

Grievance # 24-2019 was heard by the undersigned panel on Captain Jeffrey Butler

The suspension / reprimand imposed by the City is (circle one) sustained / reversed / or reduced. If reduced, the penalty shall be _____.

COMMENTS

After reviewing the evidence presented, the Peer Review Panel has determined that the investigation posed several conflicts of interest.

The Panel identified the following:

- A direct familial relationship between evidence of the investigation and investigative body.
- Due to an active Captain's Promotional List, the lead investigator

Craig A. Gregoire
Panel Member Name

[Signature]
Panel Member Signature

Doug Wiesman
Panel Member Name

Doug M. Wiesman
Panel Member Signature

Paul F. Broxterman, Jr.
Panel Member Name

Paul F. Broxterman, Jr.
Panel Member Signature

continued
DISSENT etc
(IF APPLICABLE)

was potentially in a position to benefit from a sustained finding of Captain Butler.

- while being implicated in the investigation, the Police Chief attended discussions related to this investigation prior to the conclusion of the investigation.

Panel Member

At least two members must agree on sustaining, reversing, or reducing a penalty for decision to be final. No deadlocks are permitted.

The Panel believes that because of these conflicts identified, one could consider that the investigation not fair or objective which further lends to the veracity of the sustained finding.

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

THE STATE OF OHIO, *ex rel*,

JEFFREY L. BUTLER, JR.
7046 Ruwes Oak Drive
Cincinnati, OH 45248

Relator,

-vs-

THE CITY OF CINCINNATI
801 Plum Street
Cincinnati, OH 45202

-and-

ELIOT ISAAC, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY
AS CHIEF OF POLICE OF THE CITY
OF CINCINNATI
City Hall
801 Plum Street
Cincinnati, OH 45202

Respondents.

Case No.: _____

Judge Robert P. Ruehlman

**RELATOR'S MOTION FOR
TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND
PERMANENT INJUNCTION, AND
MEMORANDUM IN SUPPORT**

Pursuant to Rule 65 of the Ohio Rules of Civil Procedure, Relator Capt. Jeffrey L. Butler, Jr., respectfully moves the Court to issue a temporary restraining order and preliminary injunction (made permanent upon motion) requiring Respondents to remove from Relator's personnel file and ETS records the investigation and report underlying the July 3, 2019 Reprimand reversed by the Peer Review Panel on July 25, 2019, and prohibiting Respondents from placing Capt. Butler on a Brady List as a result of that investigation.

This Motion is based upon the Verified Complaint and Petition for a *Writ of Mandamus* filed in this matter, and supported by the accompanying Memorandum in Support.

Respectfully submitted,

/s/ Brian P. Gillan

Brian P. Gillan (0030013)

Randolph H. Freking (0009158)

FREKING MYERS & REUL LLC

600 Vine Street, 9th Floor

Cincinnati, OH 45202

PH: 513/721-1975 – FX: 513/651-2570

bgillan@fmr.law

randy@fmr.law

Attorneys for Relator Capt. Jeffrey L. Butler, Jr.

**MEMORANDUM IN SUPPORT OF RELATOR’S MOTION
FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION AND PERMANENT INJUNCTION**

I. FACTS¹

In his position as the highest ranking officer in the City of Cincinnati Police Department’s Inspection Section, Capt. Butler was tasked with supervising the semi-annual Police Department audit of overtime usage. The results of the audit disclosed that the Police Department had incurred significant overtime expenses, often as a result of inappropriate and illegal conduct, especially in the Police Department’s District 5, which was commanded by Capt. Bridget Bardua. The audit disclosed that the Police Department spent millions of dollars in overtime with at least 15 officers bringing in tens of thousands of dollars in overtime each. An inordinate amount of overtime centered in District 5, commanded by Capt. Bardua. Capt. Bardua herself earned \$82,723 in overtime during the audit period.

According to the audit, the payments are part of a broader problem involving Police Department overtime and police officer intentional manipulation of overtime. “These appear to be systemic management issues,” the audit continues. “The failure to adhere to established processes has resulted in a significant and negative financial impact and places extensive financial liability on the [police] department.” (Exh. A to *Mandamus* Petition, at p.7.)

Capt. Butler brought his concerns regarding overtime abuse directly to Capt. Bardua during the audit period. In addition, he brought those same issues directly to Respondent Chief Isaac on several occasions, including most recently on February 10, 2018. He did nothing.

In Capt. Butler’s reasonable belief, the systemic abuse of overtime in District 5 headed by Capt. Bardua constituted felony theft. Under Ohio Revised Code § 2921.22, Capt. Butler was

¹ These facts are all drawn from the Verified Petition and Complaint for a *Writ of Mandamus* filed in this matter.

compelled to report that abuse to law enforcement authorities. He did so directly to Respondent Chief Isaac on numerous occasions.

On previous occasions when police officers or civilian staff had been found to have intentionally abused the overtime system, disciplinary action had been instituted against them. On this occasion, Respondent Chief Isaac repeatedly refused to initiate any disciplinary investigative action against Capt. Bardua, or permit any other law enforcement officer to initiate disciplinary investigative action against Capt. Bardua or those under her command.

Rather, Respondent Chief Isaac went out of his way to protect Capt. Bardua from the consequences of her abuse of the overtime system and her allowing officers in District 5 to abuse the overtime system. Rather than discharge his duty and pursue disciplinary action against Capt. Bardua and those under her command who have flagrantly and illegally abused the overtime system, effectively stealing Cincinnati taxpayer monies for their personal gain, Respondent Chief Isaac has instead retaliated against Capt. Butler and other high-ranking Cincinnati police officers who had challenged his failure to act in regard to these matters.

The ouster of Executive Assistant Chief David Bailey in March 2018 following public release of the overtime audit is just one example. In addition, Respondent Chief Isaac has effectively marginalized Capt. Butler in retaliation for his complaints about Respondent Chief Isaac's inappropriate relationship with Capt. Bardua and failure to act on her abuse of the overtime system; Capt. Butler's role in supervising the audit; and Respondent Chief Isaac's mistaken belief that Capt. Butler was involved in the public disclosure of the overtime audit. Effective March 18, 2018, Respondent Chief Isaac transferred Capt. Butler to the Cincinnati Police Academy, but stripped him of any substantive responsibility.

Largely as a result of the allegations raised by Capt. Butler, including his allegations of felony abuse of overtime by Respondent Isaac's close personal friend and confidant, Capt. Bridget Bardua, and those under her command, Hamilton County Prosecutor Joseph Deters impaneled a Grand Jury.

The Grand Jury issued a Subpoena on April 27, 2018 for documents related to the February 2018 semi-annual Police Department Audit of overtime usage and Capt. Butler's allegations regarding abuse of the CPD's overtime policy. Deters also referred the matter to Ohio Auditor Yost for investigation. During the course of Auditor Yost's investigation, the Auditor's investigative team requested supporting documentation for the Audit.

At least one banker's box containing numerous documents directly relevant to the Audit and to the Auditor's investigation, and responsive to the Hamilton County Grand Jury Subpoena suddenly went missing. The fact that those documents were missing was known to Respondent Isaac and Respondent City of Cincinnati since at least June 13, 2018. Nonetheless, Respondents made no sincere effort to find those documents.

Rather, it was not until Capt. Butler was asked to meet with an investigator with the State of Ohio Auditor's Office that this issue was addressed. Respondents' loss or destruction of these documents, and their lackadaisical attitude toward finding the documents, prompted Capt. Butler to ask the Acting City Manager (Patrick Duhaney) for an external administrative and/or criminal investigation on October 17, 2018. (See Exh. B, attached to *Mandamus* Petition.)

Rather than begin the external investigation Capt. Butler requested, Respondents instead began an internal investigation. That internal investigation was not designed to find the missing documents or determine why there were missing; instead, it was designed to unfairly implicate Capt. Butler.

The investigation included a finding that resulted in the issuance of a reprimand to Capt. Butler on July 3, 2019. Capt. Butler appealed that discipline to a Peer Review Panel and, on July 25, 2019, that Panel issued a unanimous award reversing the reprimand. (Exh. C to *Mandamus* Petition.) That award also found numerous substantial conflicts of interest and inappropriate conduct which undermined the integrity of the investigation and its conclusions. (*Id.*) Those conflicts are detailed below, at Section II (B).

On August 5, 2019, counsel for Capt. Butler sent a letter to the City Solicitor for Respondent City of Cincinnati, asking her to confirm that not only was the reprimand removed from Capt. Butler's personnel files and ETS records, but that the underlying investigation and report itself would be removed from Capt. Butler's personnel files and ETS records, along with the vacating of all sustained findings. (Exh. D to *Mandamus* Petition.)

The letter also requested that the City Solicitor confirm that Capt. Butler has not been, and will not be, placed on a Brady List as a result of the investigation which led to the reprimand that was reversed by the Peer Review Panel on July 25, 2019. (*Id.*) To date, counsel for Capt. Butler has received no response through this inquiry from the City Solicitor for Respondent City of Cincinnati.

II. ARGUMENT

A. Rule 65 Standard.

To be entitled to preliminary injunctive relief, a movant must show by clear and convincing evidence that there is a substantial likelihood that he will prevail on the merits, that he will suffer irreparable injury if the injunction is not granted, that third parties will not be unjustifiably harmed if the injunction is granted, and that the public interest will be served by the injunction. *Procter & Gamble Company v. Stoneham*, (2000), 140 Oh. App.3d 260, 267;

Vanguard Transp. Sys., Inc. v. Edwards Transfer and Storage Co., (10th Dist. 1986), 109 Ohio App.3d 786, 790.

B. Capt. Butler Has Satisfied the Requirements of Rule 65.

Capt. Butler has established that he meets the tests required to obtain injunctive relief under Rule 65 of the Ohio Rules of Civil Procedure.

1. Relator is likely to succeed on the merits.

Relator has established that he is likely to succeed on the merits since the Petition for *Writ of Mandamus* makes it clear that unless this Court compels Respondents to remove from Capt. Butler's personnel files and ETS records the investigation and report underlying the reprimand which was reversed by the Peer Review Panel, the Peer Review Panel's award is effectively meaningless. As long as the tainted, biased report remains in Capt. Butler's personnel file and ETS records, it will always be potentially available for dissemination in a way that unfairly and inappropriately damages Capt. Butler.

The Peer Review Panel's award is a scathing indictment of the investigation itself. It identified numerous conflicts of interest which go to the heart of the integrity of the investigation and the report. Those conflicts include:

First, "[a] direct familial relationship between the evidence of the investigating and investigative body". It arose because Capt. Butler's direct supervisor, Assistant Chief Teresa Theetge, who was involved in Respondent City of Cincinnati's overtime audit and supervised the CPD Section where the box of overtime audit-related documents that has gone missing was last seen, is the sister of Russ Neville, the Captain assigned to oversee the internal investigation which resulted in Capt. Butler's inappropriate discipline.

Second, the Peer Review Panel also identified as a serious conflict of interest the fact that “due to an Active Captain’s Promotion List, the Lead Investigator was potentially in a position to benefit from a sustained finding [of discipline against] Capt. Butler.” This conflict of interest arose from the fact that Lt. Doug Snyder, who led the investigation, is next on the Promotion Eligibility List for Captain.

Third, the Peer Review Panel found as a serious conflict of interest the fact that “[w]hile being implicated in the investigation, the Police Chief attended discussions related to this investigation prior to the conclusion of the investigation.” This conflict of interest is so obvious and so damning that it needs no further comment.

The Peer Review Panel concluded: “The Panel believes that because of these conflicts identified, one could consider the investigation not fair or objective, which further leads to the veracity of the sustained finding.”

Based upon all of the foregoing, there is no question that Relator is likely to succeed on the merits, and thus has established the first test under Rule 65.

2. Relator will suffer irreparable injury if the request for relief is not granted.

Ohio courts define irreparable injury as one where “it is reasonably certain that the ‘moving party’ will suffer immeasurable damages.” *E.R. Moore Co. v. Ochiltree*, 16 Oh. Misc. 45 (1968). That is certainly true here. Respondents can only remedy Relator’s irreparable injuries if they are required by this Court to remove from Capt. Butler’s personnel files and ETS records the underlying investigation and resulting report which led to the inappropriate (and now reversed) discipline, along with the vacating of all sustained findings, and confirmation that Capt. Butler has not been and will not be placed on a Brady List as a result of the tainted investigation.

3. No third parties will be harmed by the granting of the request for relief.

No third parties will be harmed by the granting of the request for relief in this case, since no third parties have rights at stake in the legal proceedings between Relator and Respondents.

4. The public interest will not be disserved by issuing the request for relief.

The courts “are concerned primarily that the issuance of the injunction will not disserve (as opposed to just serve) the public interest.” *Escape Enterprises, Ltd. v. Gosh Enterprises, Inc.*, (2005) 2005 Oh. 2637, 2005 Oh. App. LEXIS 2466 (quoting *Gateway Eastern Ry. Co. v. Terminal RR Assoc. St. Louis*, 35 F.3d 1134, 1139 N.3 (7th Cir. 1994)). Here, there is no public interest that will be disserved by the granting of the requested injunctive relief.

III. CONCLUSION

For all of the reasons stated herein, Relator Capt. Jeffrey L. Butler, Jr. requests this Court issue a temporary restraining order and preliminary injunction (made permanent upon Motion) requiring Respondents to remove from Relator’s personnel file and ETS records the investigation and report underlying the July 3, 2019 Reprimand reversed by the Peer Review Panel on July 25, 2019, and prohibiting Respondents from placing Capt. Butler on a Brady List as a result of that investigation.

Respectfully submitted,

/s/ Brian P. Gillan

Brian P. Gillan (0030013)
Randolph H. Freking (0009158)
FREKING MYERS & REUL LLC
600 Vine Street, 9th Floor
Cincinnati, OH 45202
PH: 513/721-1975 – FX: 513/651-2570
bgillan@fmr.law
randy@fmr.law

Attorneys for Relator Capt. Jeffrey L. Butler, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2019, a copy of the foregoing was sent *via* regular

U.S. Mail and electronic mail, as follows:

Paula Boggs Muething, City Solicitor
Email: *paula.boggsmuething@cincinnati-oh.gov*
City of Cincinnati Solicitor's Office
801 Plum Street, Suite 214
Cincinnati, OH 45202

/s/ Brian P. Gillan